IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 25.1.2007

Rambir

... Appellant

versus

State of Haryana

... Respondent

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice A.N.Jindal.

Present: Mr.J.S.Bedi, Advocate
for the appellant.
Ms.Ritu Punj, DAG, Haryana.

UMA NATH SINGH, J.

This Criminal Appeal arises out of a judgment dated 6.1.2005 passed by learned Sessions Judge, Bhiwani, in Sessions Case No.14 of 16.5.2002 (ST No.80 of 16.5.2002), convicting the accused appellant under Section 302 IPC and sentencing him to RI for life with a fine of Rs.2,000/-. In default of payment of fine, the accused was directed to further undergo RI for six months. However, two co-accused, namely, Surajbhan and Balwan, both real brothers, were acquitted of the charge under Sections 302/120-B read with Section 34 IPC.

Vide the FIR (Ex.PB) dated 3.3.2002, which was registered at 7.50 P.M. on a ruqa submitted by Rajender Singh (PW8), brother of the deceased, it appears that besides him, he had two brothers. The elder one was Om Parkash (PW12) and deceased Surender Kumar was the youngest. As the deceased was running a shop of electric motor winding in village Mandholi Kalan, he would go to the shop in the morning and return in the evening. On the date of incident, i.e., 16.2.2006, he left for his shop at

village Mandholi Kalan at about 7.00 AM. At about 10.30 PM, one Kapur Singh (not examined) came to him by a jeep and informed that at about 10.00 PM, co-accused Balwan and witness Balbir Singh (PW6) had brought the deceased to his house in a P-Cap vehicle, which belonged to witness Balbir Singh. Balbir Singh had told him that deceased Surender Kumar had fallen into their well suddenly at about 10.00 PM. They had taken him out from the well with the help of neighbourers. His head and legs were injured and he had become unconscious. The informant had also noticed the injuries located on his head and both the legs. The deceased was carried to a place known as Ishawal for treatment by Umed Singh and co-accused Balwan in the P-Cap vehicle. Being informed by Kapur Singh, complainant Rajender Singh along with his father Hari Singh and informant Kapur Singh set out and reached the dispensary of Dr.Jaibir Singh (PW2) at Village Ishawal, in the jeep of Kapur Singh. However, they were informed by the Doctor (PW2) that the deceased, who had been carried to him for treatment by 2-3 persons, said to be the residents of Village Madholi Kalan, after being given first aid treatment, was referred to the City Hospital, Hisar. Therefore, they reached the City Hospital, Hisar, where the vehicle carrying the deceased was standing. Witness Balbir Singh, Umed Singh (not examined) and co-accused Balwan were also present there. They informed that the deceased died on the way 15 minutes before they could reach the hospital and his dead body was lying in the vehicle. They saw the dead body of the deceased and noticed that his head and both legs were injured. They returned with the dead body to their Village Mandholi Kalan and made necessary enquiries about the incident. The complainant was given to understand that the deceased by chance fell into the well and succumbed to

the aforesaid injuries. The complainant also stated that having seen the dead body, their minds had stopped working and they had not been in a position to think properly. Thereafter, they cremated the dead body on 17.2.2002 as per their family rites in the village cremation ground. Later on, the village Panchayat had also been convened 2-3 times to ascertain the cause of death but the complainant was not satisfied with the outcome. Hence, he lodged a report with the police stating that on that date, he had learnt that on 16.2.2002 at about 7.30 PM, a quarrel had taken place between the deceased and the accused in front of the motor winding shop of the deceased. He further learnt that a year back, the accused had sold his scooter to one Ganga Dhar, Mechanic, of Siwani (not examined), through the deceased but he had not received the sale consideration. Hence, he harboured an ill-will against the deceased. On the night of incident, i.e., 16.2.2002, also, there was a quarrel between the deceased and the accused-appellant. Co-accused Surajbhan had got the winding of his motor done by the deceased and he owed Rs.15,000/- to him. The accused had an intention to kill the deceased but with the intervention of witness Balbir Singh and one Mahabir Singh (not examined), both were separated. The accused persons, Rambir, and co-accused, Surajbhan carried the deceased in their scooter (DDV-2827), looking for a place to execute their plan. They had carried the deceased to the well of one Mohan Dass first where other people were present. They returned to the well of witness Balbir Singh. Balbir Singh and one Sanjay Barber were present at that time. Accused Rambir and his accomplish Surajbhan served liquor to the deceased in the khuddi (an unauthorised place for consuming liquor) of witness Balbir. The deceased came out for a while to go for urination at about 9.00 PM. He

had been followed by accused Rambir, who pushed him into the well with an intention to cause his death. Thereafter, the accused ran away from the spot in his scooter. On the basis of the aforesaid statement, the police registered an FIR for offences under Sections 302/120-B/34 IPC against accused Rambir, and co-accused Surajbhan and Balwan (since acquitted). During the course of investigation, the accused had been arrested on 7.3.2002 and vide a disclosure statement (Ex.PM), certain incriminating articles were recovered from the places as indicated by them. After the completion of investigation, a challan had been laid by the Investigating Officer (PW10) and the accused were tried upon the charges under Sections 302/120-B/34 IPC. SI/SHO Babu Ram (PW10), the Investigating Officer, recorded a confessional statement of the accused appellant before witness Mange Ram (PW1), an Ex Sarpanch of Village Kashni Kalan. He had prepared a rough site plan (Ex.PH) and seized the blood stained earth (Ex.PJ) and burnt ashes/bones (Ex.PE) of the deceased. The prosecution examined as many as 12 witnesses. Mange Ram (PW1) is the witness of extra judicial confession. Dr.Jaibir Singh (PW2) is the Doctor, who had initially examined the deceased and after giving him first aid, referred him to the City Hospital, Hisar. HC Hardwari Lal (PW3) carried the special report to the Illaqa Magistrate, and ASI Rattan Singh (PW4) recorded a formal FIR (Ex.PB). HC Sishan Pal (PW5) tendered affidavit (Ex.PD) pertaining to recovery of blood stained earth from the well, and Balbir Singh (PW6) had last seen the deceased and the accused together. Anil (PW7) witnessed the deceased while being taken out of the well.

Rajender Singh (PW8), being elder brother of the deceased, is

the complainant of the incident, on whose report (Ex.PC) in writing the FIR was recorded by the police. Ramesh Kumar, Patwari (PW9), prepared the site plan (Ex.PG) and SI Babu Ram (PW10) is the SHO and the Investigating Officer. Ram Kishan (PW11) is a panchayat witness and according to him, a panchayat had been called on 19.2.2002 but the accused did not make any confessional statement before the panchayat members. Om Parkash (PW12) is the eldest brother of the deceased, who is a witness of recovery of a scooter belonging to one Jai Singh. The defence also examined two witnesses, namely, Parveen Kumar (DW1) and Daya Nand (DW2), in respect of village politics during some panchayat election. The statement of the accused under Section 313 Cr.P.C. was recorded on 29.8.2003, wherein he has given the following explanation:-

> "I am innocent. Originally, I hail from village Bhagvi, Tehsil Charkhi Dadri. I purchased land in village of occurrence and the same is adjacent to the fields of Balbir PW. He was interested in purchasing the said land. The complainant party also wanted to purchase that land. The complainant party was hostile and nourishing grudge against me. For that reason, I was falsely implicated in this false case. The deceased had fallen in the well of his own while he was heavily drunk."

We have heard learned counsel for the parties and perused the records.

Shri Bedi, learned counsel for the appellant, inter-alia, submitted that the motive attributed to the accused is not supported by any evidence and as such, it is not proved. According to him, vide FIR, the complainant has attributed two motives to the accused for commission of

murder. First in a transaction of sale of a scooter of the accused appellant to Gangadhar through the deceased, he had not been paid the sale consideration and hence, he was annoyed on that count. Second, co-accused Surajbhan owed Rs.15,000/- to the deceased for having got his motor winding done by him, who was a Mechanic of that trade. According to learned counsel, simple mentioning of two motives in the FIR was not enough to sustain the prosecution case without any evidence or material in support. Gangadhar, purchaser of the scooter of the accused, though vide the evidence of the Investigating Officer (PW10) had given a statement to the police, was not produced in witness box. He could be a material witness to the motive part of the story. Similarly, in respect of second motive, there is no evidence on record whatsoever, except a mention in the FIR. As regards the second circumstance, namely, an extra judicial confession made by the accused before Mange Ram (PW1) which was recorded by I.O. Babu Ram (PW10), learned counsel submitted that the said statement, admittedly, recorded by a police officer under Section 161 Cr.P.C. would shed its character as an extra judicial confession before PW1 and rather, it would be hit by the provisions of Section 25 of the Indian Evidence Act. Learned counsel further submitted that even if it is to be treated as a statement under Section 161 Cr.P.C., there was no discovery and recovery of any article pursuant thereto. Further, according to learned counsel, vide a disclosure statement made on 8.3.2002, nothing had been recovered from the accused and only vide the disclosure statement dated 10.3.2002, wherein the accused is stated to have dis-owned his earlier disclosure to the police, one scooter belonging to one Jai Singh was recovered. The scooter was allegedly used for carrying the deceased by the

appellant in company of co-accused Surajbhan from well to well and finally to the khuddi of witness Balbir Singh (PW6). Thus, according to learned counsel, the extra judicial confession as set up by the prosecution does not carry any weight in the eyes of law. Learned counsel also pointed out certain contradictions in the statements of the Investigating Officer (PW10) and Om Parkash (PW12), the eldest brother of the deceased, as regards the place of recovery of the scooter in question. According to Om Parkash (PW12), the scooter had been recovered from the khuddi of witness Balbir Singh (PW6), whereas as per the statement of the IO (PW10), it was recovered from the premises belonging to the accused. Learned counsel has also pointed out some vital contradictions in the statements of Mange Ram (PW1) and the I.O. (PW10) in regard to the date of making of extra judicial confession and the recovery of the articles, if any, pursuant thereto. According to Mange Ram (PW1), the accused had given an extra judicial confession before him on 17.3.2002, whereas vide the testimony of the I.O. (PW10), the accused was taken into custody on 7.3.2002 and he made the confessional statement on that date itself. Learned counsel also pointed out that Mange Ram (PW1) and the accused never had an occasion for social interactions as both of them hailed from different villages, having distance of 80 kilometers which came under different panchayats. Admittedly, vide evidence of Mange Ram (PW1), it has come to notice that the accused had never visited his place, except on 17.3.2002. Thus, it sounds unnatural that the accused would have made an extra judicial confession before him, as canvassed by the prosecution. Learned counsel vehemently argued that there is a dearth of clinching evidence to support the circumstance. According to him, all the three accused with witness Balbir Singh (PW6) and the

deceased took liquor inside the khuddi of Balbir Singh. Thereafter, the deceased went out for urination. He was followed by accused Rambir. Beyond that, witness Balbir Singh (PW6) could not see anything, except hearing the noise made by the accused that the deceased had fallen into the well. Thus, learned counsel asserted that witness Balbir Singh had not seen the act of pushing of the deceased into the well. Accordingly, the circumstance of last seen does not lead to conclusion that the deceased was pushed into the well by the accused. Learned counsel also submitted that when the parties had quarrelled near the motor winding shop of the deceased, they were separated by witness Balbir Singh (PW6) and Mahabir Singh (not examined). It has also come in the prosecution evidence that though a number of people were present at that time on the scene of occurrence but the prosecution has not examined any other independent witness. Moreover, it has come in the evidence of Dr.Jaibir Singh (PW2) that the persons, including witness Balbir Singh (PW6), who carried the deceased for treatment to his dispensary, had stated that the deceased had received injuries by falling into the well, while doing his work. Thus, the circumstance of last seen has ceased to have an incriminating character against the accused. According to learned counsel, there was an inordinate delay in lodgment of the FIR as the incident reportedly had taken place on 16.2.2002, whereas the FIR was lodged on 3.3.2002, and that too, on a hearsay information, which is hit by the provisions of Section 60 of the Indian Evidence Act.

On the other hand, learned State counsel submitted that there was a strong motive on the part of the accused to commit murder of the deceased. Pursuant to a disclosure statement given on 10.3.2002, the scooter

which had been used for carrying the deceased to the khuddi of witness Balbir Singh (PW6) was seized. Further, Balbir Singh (PW6) had last seen the deceased in company of the accused and, thus, the impugned judgment does not call for any interference.

On a careful analysis of the rival submissions, as also the evidence on record, we notice that the prosecution case is based only on circumstantial evidence. The incriminating circumstances, as set out by the prosecution, are: (i) extra judicial confession alleged to have been given before Mange Ram (PW1); (ii) the deceased was last seen with the accused by witness Balbir Singh (PW6); (iii) there was a motive for commission of offence, and (iv) recovery of scooter pursuant to the disclosure statement given by the accused on 10.3.2002. As regards the circumstance of extra judicial confession, Mange Ram (PW1) has stated that all the three accused, including the appellant had come to him on 17.3.2002 at about 3.00 PM and made a confessional statement. He has also stated that SHO Babu Ram (PW10) was present at that time. He has admitted that appellant Rambir is a resident of different village, namely, Bhagvi, which is situated at a distance of 80 kms. from his village. He has clarified in a subsequent statement that the accused had never visited his house, except on 17.3.2002. It, thus, appears that PW1 and the accused had no social interaction and it seems rather improbable that under such circumstances, the accused would have made an extra judicial confession before him. He has further stated that he had no knowledge as to whether the deceased was used to taking alcohol. He also appears to be contradicting the I.O. (PW10), who has stated that the accused had made extra judicial confession before Mange Ram (PW1) on 7.3.2002, whereas, as per evidence of Mange Ram, it was on 17.3.2002. It

may not be a typographical error in recording the date, as at two places in his testimony, PW1 has stated that the accused had visited his place only on 17.3.2002. Further, PW1 has admitted that the IO was present with a Constable when the extra judicial confession was made before him. The IO has also mentioned that an extra judicial confession made by the accused was recorded by him in presence of Mange Ram (PW1). Admittedly, there was no recovery pursuant to the extra judicial confession made by the accused on 7.3.2002 or 17.3.2002. Thus, in the absence of discovery and recovery of any incriminating article, the extra judicial confession would have no value in the eyes of law. Moreover, the extra judicial confession was recorded by the IO, a police officer. Thus, this is only a statement under Section 161 Cr.P.C., which is not admissible in evidence for the same reason that there was no discovery and recovery pursuant thereto. As regards the circumstance of motive, Rajender Singh (PW8), brother of the deceased, has stated in the FIR that he had learnt about a quarrel between the accused and the deceased in front of the motor winding shop of the deceased, and they were separated by witness Balbir Singh (PW6) and one Mahabir Singh (not examined). Balbir Singh (PW6), in his evidence, has stated that on 16.2.2002 at about 7.30/8.00 PM, he along with one Sanjay, was going to their fields having a tubewell. They had stopped and sat on a chabutra near the shop of the deceased, which was situated on the way. He also called Pappu, driver of his jeep. After some time, accused Rambir and Surajbhan came in a scooter. After stopping the scooter, accused Rambir started quarreling with the deceased. This witness (PW6) had separated them, and then the deceased asked him to drop him at his house, as there was a likelihood of further quarrel. When the deceased had come near his

jeep, then accused Rambir told him that he would drop him at his house on his scooter. Witness Balbir Singh and Sanjay went away thereafter to their fields, leaving the deceased and accused Rambir there. As per his further evidence, 15 minutes thereafter, accused Rambir and Surajbhan with the deceased came to his field on the scooter. They had stayed for 1 or 2 minutes at their tubewell, and thereafter, went to the tubewell of Mohan Dass. They returned to the tubewell of this witness after 10-15 minutes. Thereafter, all of them had sat in the khuddi of Balbir Singh and took liquor which accused Rambir was carrying in two pouches. After they had consumed liquor, the deceased had asked this witness to drop him at his house but the accused had again intervened and told that he would drop him at his residence. Thereafter, the deceased had sat on a cot for about 2-4 minutes and then got up to go for urination. He had gone outside the khuddi for urination and accused Rambir followed him. After about 1/1-1/2 minutes, accused Rambir raised noise that Surender Kumar had fallen into the well. They all had come out from the khuddi, however, the accused was not found present there. They had shouted but there was no reply from the well. PW6 being accompanied by Sanjay, and co-accused Surajbhan went to village for rope to take out the deceased from the well. Another co-accused Balwan also reached there. The deceased was taken out by Anil (PW7) and co-accused Balwan with the help of neighbours. This witness has further stated that the deceased was alive when he had been taken out from the well and one Kapur Singh went to inform his family. He, Balwan and Umed Singh had taken the deceased to a private nursing home at Ishawal. He had noticed the presence of injuries only on the legs and not on any other part of the body of the deceased. He was conscious at that

time. In his cross-examinations, PW6 has replied that the boundary wall of the well was only upto the height of 1/1-1/2 feet on one side and as low as the land level on the other side. Even in the cross-examination of the IO (PW10), it has come that the well was having a boundary wall of 1/1-1/2 feet from the surrounding ground level. He has also stated that his jeep was parked between the well and the khuddi. This witness has clarified that he, Sanjay or Surajbhan had not noticed the deceased falling into the well. He has further stated that he had participated in the cremation of the deceased and also in family mourning for 12 days. According to him, the deceased was running an electric motor winding machine for the last 4-5 years. He has also stated that accused Rambir was residing in village Mandholi Kalan for the last 8-10 years and he had also purchased 30 bighas of land from Maru Ram Dhanak. From the evidence of PW6, it appears that a quarrel had taken place between the accused and the deceased in front of electric motor winding shop of the deceased, which he had separated, but he has said nothing about the non-payment of sale proceed of the scooter of the accused to be the cause of this quarrel as has been mentioned by complainant Rajender Singh (PW8) in his statement. Thus, the evidence of the eye witness(PW6), who had intervened and separated the accused and the deceased during the quarrel does not support the testimony of the complainant, Rajender Singh (PW8), brother of the deceased, who did not have a first hand information about the incident. It also appears from the evidence of the eye witness that the accused had enough opportunity to commit the murder of deceased if he really had any such intention to do so. The deceased had been carried in a scooter by the accused and co-accused Surajbhan from place to place and they took liquor thereafter in the khuddi

of Balbir Singh but there was no untoward incident between them at that place. The deceased was a young man like the accused and both of them had taken drinks in the company of the eye-witness (PW6) and it has also not come in the evidence of this witness that the deceased was dead drunk as the doctor (PW2) has also not said that the deceased was smelling alcohol when he had brought to him for treatment. Under the circumstances, it cannot be said that the deceased may have been over powered and pushed into the well by the accused within a minute of his coming out from the khuddi for urination, particularly when the way to the well was not free as the jeep of the witness was parked between the khuddi and the well. Evidence of the IO (PW10) also suggests that there was an open space on the north side of the well. Prosecution case does not appear to be true also for the fact that Dr.Jaibir Singh (PW2) has stated that the persons, including the eye-witness PW6, who had accompanied the deceased to him for treatment, had stated that the deceased had suffered injuries while doing his works. Thus, in the absence of any specific averment showing motive for quarrel and enmity between the accused and the deceased, it does not stand to reason as to how PW8 had come to know that the accused had a motive to commit murder of the deceased. Nowhere in the entire evidence, it has come that the accused had harboured ill will for non-payment of sale consideration of his scooter, said to have been sold through the deceased to one Gangadhar. As per evidence of the IO (PW10), he recorded the statement of Gangadhar,purchaser of the scooter of the accused, but Gangadhar has not been produced in the witness box and the prosecution has no explanation either. The IO (PW10) also appears to be silent about the motive part of the story. As regards the circumstance of last

seen, from the aforesaid statement of Balbir Singh (PW6), it appears that within 1/1-½ minutes of coming out of the deceased for urination from his khuddi, he heard the noise of the accused that the deceased had fallen into the well. The relevant portion of his statement as such is:-

> "Thereafter, Surender sat on a cot for about 2-4 minutes and told that he was going to urinate. When Surender went outside the khuddi for urination, Rambir accused also followed him. After about one or one and half minutes, Rambir raised noise that Surender had fallen in the well."

In his cross-examination, PW6 has stated that he had not seen the deceased falling into the well:-

> "When Surender fell down in the well, I, Sanjay and Surajbhan were present in the khuddi. We three had not noticed Surender falling in the well."

Further, if the accused had a motive to do away with the deceased, he would not have made noise about the falling of deceased into the well. It has also come in the testimony of PW6 that there was a 1-½ feet high boundary wall on one side of the well and the other side of the well was only upto land level. Possibly, the deceased may have fallen into the well under a mistaken impression not knowing the exact location of the well and the position of its boundary wall around when he had come out of the khuddi under the influence of liquor to go for urination. Prosecution witness Ramesh Kumar Patwari, (PW9) has stated that the distance between the khuddi and the well was only 2 karams and the wall of the well was just 1/1-½ feet high. Thus, the boundary wall of the well was not high enough to ensure safety against an accidental fall. Further, this is also not a

prosecution case that the accused had earlier visited the khuddi of Balbir Singh or he had come out of the khuddi during drinking session to assess the situation for pushing the deceased into the well. As per the evidence of eyewitness Balbir Singh (PW6), he had participated in taking out the deceased from the well and also in carrying him to nursing home in his P-Cap vehicle. He also participated in cremation of the deceased and even in the family mournings, thereafter, for 12 days, but it looks quite unnatural that he had not uttered a single word about the incident to the complainant (PW8) whose evidence is wholly based on the informations given by him. Moreover, PW6, in his evidence, has admitted that he had not seen the falling of deceased into the well. Regarding the recovery of scooter, it has come in the evidence of the IO (PW-10) that he recovered the scooter from the premises belonging to the accused, whereas in the testimony of Om Parkash (PW-12), brother of the deceased, it is noticed that it was recovered from the khuddi of witness Balbir Singh. That apart, vide recovery memo (Ex.PN), the scooter involved in carrying the deceased was not registered in the name of the accused but in the name of one Jai Singh, who has not been examined. In its judgment reported in 1993 Supp.(3) SCC 41 (Sabir Singh v. State of Punjab), Hon'ble the Apex Court has summarised the requirements for proving the guilt of the accused in the cases of circumstantial evidence as :

(i) the circumstances from which conclusion of guilt is to be drawn should in the first instance be fully established;

(ii)(ii) all the facts so established should be consistent only with the hypothesis of guilt of the accused and should be such as to exclude every hypothesis but one sought to be proved;

(iii) the circumstances should be of a conclusive nature; and

(iv) the chain of evidence should not have any reasonable ground for a conclusion consistent with the innocence of the accused.

In the instant case, none of the circumstances as set up by the prosecution appears to be conclusively proved. Rather the testimonies of prosecution witnesses produced to prove the circumstances of the case seem to contradict each other. These circumstances, having not been found to be proved on facts and evidence led by the prosecution lead to the conclusion consistent with the innocence of the accused. The statement of complainant, Rajender Singh (PW8), may at its best be only a hearsay evidence and its credibility would depend on the veracity of the testimony of eye witness Balbir Singh (PW6). The investigation appears to be faulty inasmuch as, the IO has not made any effort to investigate into the areas: as to whether the deceased and the accused were under the influence of liquor when the incident took place, as to why a material witness Gangadhar, alleged purchaser of the scooter of the accused, was not produced, and as to why Jai Singh, owner of the scooter, said to be involved in the offence which was seized at the instance of the accused, pursuant to his disclosure statement, was not cited as a witness.

In the premises discussed hereinabove, the impugned judgment is hereby set aside and the criminal appeal is allowed. The accused

appellant, who is lodged in jail, shall be released forthwith, if not wanted in any other case.

(A.N.JINDAL)
JUDGE

(UMA NATH SINGH)
JUDGE

25.1.2007
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